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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DOGAN SOYLEMEZ, *individually and on behalf of others similarly situated,* Plaintiffs, - against - H.T. CAFÉ LTD. d/b/a EAT & GO, HASAN SUROZU, and BERK ISIKTAN, Defendants.	ECF 16 Civ. _______ **COMPLAINT** **COLLECTIVE ACTION UNDER 29 U.S.C. § 216(b)** **DEMAND FOR JURY TRIAL**

Plaintiff DOGAN SOYLEMEZ, individually and on behalf of others similarly situated, by his attorneys Pryor Cashman LLP, upon their knowledge and belief, hereby submits this Complaint against Defendants H.T. CAFÉ LTD. d/b/a EAT & GO, HASAN SUROZU, and BERK ISIKTAN respectfully alleging as follows:

NATURE OF THE ACTION

1. Plaintiff Dogan Soylemez ("Mr. Soylemez") is a former employee of H.T. Café Ltd. d/b/a Eat & Go (the "Company").

2. The Company operates a food kiosk at Terminal 1 at John F. Kennedy Airport in Queens County, New York.

3. Hasan Surozu ("Mr. Surozu") and Berk Isiktan ("Mr. Isiktan") (collectively with the Company, "Defendants") own and operate the Company respectively.

4. At all times relevant to this Complaint, Defendants maintained a policy and practice of requiring Mr. Soylemez to work in excess of forty (40) hours per week without paying him overtime compensation as required by federal and state laws.

5. Mr. Soylemez brings this action on behalf of himself, and other similarly situated individuals ("Plaintiffs"), to recover (i) unpaid wages from Defendants for overtime work for which they did not receive overtime premium pay, as required by law, and (ii) liquidated damages, interest, and attorneys' fees and costs pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201, et seq. (the "FLSA"), the New York Minimum Wage Act, N.Y. Lab. Law §§ 650 et seq. (the "New York Labor Law"), and the "spread of hours" and overtime wage orders of the New York State Department of Labor codified at N.Y. COMP. CODES R. & REGS. Tit. 12, Part 137.

6. Mr. Soylemez seeks certification of this action as a collective action on behalf of himself, individually, and all other similarly situated employees and former employees of the Defendants pursuant to 29 U.S.C. § 216(b).

7. Mr. Soylemez further complains that he was discriminated against on the basis of his disability pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (the "ADA"), the New York State Executive Law § 296 et seq. (the "New York State Human Rights Law"), and the Administrative Code of the City § 8-101 et seq. (the "New York City Human Rights Law").

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over Mr. Soylemez's claims under the ADA pursuant to 28 U.S.C. § 1331 and under the FLSA pursuant to 28 U.S.C. §§ 1331 and 29 U.S.C. § 216(b), and supplemental jurisdiction over Mr. Soylemez's state law claims pursuant to 28 U.S.C. § 1367(a).

9. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) and (c) because Mr. Soylemez resides in this district and was employed by the Company in this district; Mr. Isiktan resides in this district; all or a substantial part of the events or omissions giving rise to the claims at hand occurred within this district; and the Company maintains its principal place of business in this district.

THE PARTIES

10. Plaintiff Dogan Soylemez is an adult individual residing in Kings County, New York.

11. Defendant H.T. Café Ltd. d/b/a Eat & Go operates a food kiosk at Terminal 1 at John F. Kennedy Airport in Queens County, New York. Upon information and belief, Defendant employs approximately twenty employees at any one time.

12. Defendant Hasan Surozu is an adult individual who does business in Queens County, and upon information and belief resides in New York City.

13. Defendant Berk Isiktan is an adult individual who does business and resides in Queens County, New York.

FACTS

Background

14. The Company has operated a food kiosk within John F. Kennedy Airport for approximately the past seven years.

15. Mr. Surozu owns and operates the Company.

16. Mr. Isiktan is the General Manager of the Company and participates in its day to day operations.

17. Mr. Soylemez worked for Defendant from approximately May 1, 2013 to April 17, 2015.

18. At all relevant times, Defendants were Mr. Soylemez's employers within the meaning of the FLSA and the New York Labor Law. Defendants had the power to hire and fire Mr. Soylemez, controlled the terms and conditions of his employment, determined the rate and method of payment of any compensation Mr. Soylemez received in exchange for his services, and maintained Mr. Soylemez's employment records.

General Employment Practices

19. Mr. Soylemez was given the misleading and inaccurate title of "manager" by Defendants so that they could treat him as an exempt employee and avoid paying him overtime compensation to which he was entitled.

20. However, the job duties and work Mr. Soylemez performed were that of a non-exempt employee. His responsibilities included taking orders from customers, serving customers their food, working the register, and ordering products that were out of stock.

21. Mr. Soylemez did not manage the Company or any department of the Company. He did not set or adjust employees' rates of pay or hours of work; appraise employees'

productivity; have the authority to direct the work of any employees; or hire or fire employees. Moreover, his suggestions or recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees were not given particular weight.

22. Mr. Soylemez also did not have the authority to discipline employees; apportion work among employees; or handle employee complaints or grievances.

23. The Company provided Mr. Soylemez with $330.00 by check and $500.00 in cash per week in compensation for approximately the first six months of his employment. He never received a Notice and Acknowledgment of Pay Rate and Payday establishing his legal rate of pay. Nevertheless, Mr. Soylemez's legal rate of pay should have been established as $20.75 per hour, and his overtime rate of pay should have been established as $31.13 per hour. This hourly rate of pay is calculated by determining his weekly salary ($830.00) and dividing this number by 40. This overtime rate of pay is calculated by multiplying his hourly rate of pay by one and one-half in accordance with 12 CRR-NY 146-3.5.

24. During the remaining months of Mr. Soylemez's employment with the Company, he received $400.00 by check and $800.00 in cash per week in compensation. He never received a Notice and Acknowledgment of Pay Rate and Payday even when his salary changed. Nevertheless, Mr. Soylemez's legal rate of pay should have been established as $30.00 per hour, and his overtime rate of pay should have been established as $45.00 per hour. This hourly rate of pay is calculated by determining his weekly salary ($1200.00) and dividing this number by 40. This overtime rate of pay is calculated by multiplying his hourly rate of pay by one and one-half in accordance with 12 CRR-NY 146-3.5.

25. In the period from May 1, 2013 through March 31, 2015, Mr. Soylemez worked at least 60 hours per week, such that he was entitled to approximately 20 hours of overtime pay per week.

26. During that period Mr. Soylemez also commonly worked over 10 hours a day, entitling him to an additional hour of pay as the spread of hours premium.

27. Although Mr. Soylemez regularly worked in excess of 40 hours a week and 10 hours a day, Defendants willfully failed to pay him overtime compensation at one and one-half times his regular hourly rate and an additional hour of pay in violation of the FLSA, New York Labor Law, and the "spread of hours" and overtime wage orders of the New York State Department of Labor codified at N.Y. COMP. CODES R. & REGS. Tit. 12, Part 137.

28. Defendants willfully disregarded and purposefully evaded recordkeeping requirements of the FLSA and New York Labor Law by neglecting to maintain accurate and complete timesheets and payroll records.

29. Upon information and belief, this was done to disguise the actual number of hours Mr. Soylemez worked, and to avoid paying Mr. Soylemez properly for overtime compensation and spread of hours pay to which he is entitled.

30. Defendants also failed to (i) post at the workplace, or otherwise provide to employees, the required postings or notices to employees regarding the applicable wage and hour requirements of the FLSA and New York Labor Law, (ii) provide Mr. Soylemez with proper wage statements with every payment of wages, and (iii) provide Mr. Soylemez with a Notice and Acknowledgment of Pay Rate and Payday, as required by the FLSA and New York Labor Law.

Defendants Discriminated Against Mr. Soylemez On The Basis Of His Disability

31. On March 31, 2015, while Mr. Soylemez was working at the Company, he began to experience debilitating abdominal pain and was taken to the hospital where he had an emergency appendectomy.

32. Mr. Soylemez was kept at the hospital for 23 days following his surgery.

33. On April 17, 2015, the Company called Mr. Soylemez while he was still in the hospital and terminated his employment. Prior to his termination, the Company made no effort to provide Mr. Soylemez with a reasonable accommodation.

34. Mr. Soylemez filed a Charge of Discrimination with the New York State Division of Human Rights (the "NYSDHR") on or about June 23, 2015 alleging that the Company discriminated against him on the basis of his disability.

35. The NYSDHR issued a Determination After Investigation on December 18, 2015 which provided, among other things, that "probable cause exists to believe that [the Company] has engaged in or is engaging in the unlawful discriminatory practice complained of" in Mr. Soylemez's Complaint of Discrimination.

36. Subsequently, Mr. Soylemez moved before the NYSDHR to dismiss his Charge of Discrimination on the basis of administrative convenience so that he could proceed in federal court.

FLSA COLLECTIVE ACTION CLAIMS

37. Mr. Soylemez brings his FLSA claims as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of all similarly situated persons who are or were employed by Defendants or any of them, on or after the date that is three years before the filing of the Complaint in this case (the "Collective Action Period"), as employees of Defendants (the "FLSA Class").

38. At all relevant times, Mr. Soylemez, and other members of the FLSA Class who are and/or have been similarly situated, have had substantially similar job requirements and pay provisions, and have been subject to Defendants' common practices, policies, programs, procedures, protocols and plans of willfully failing to maintain accurate and complete timesheets and payroll records, and failing and refusing to pay overtime compensation. The claims of Mr. Soylemez stated herein are similar to those of the FLSA Class.

FIRST CAUSE OF ACTION
(Violation of the Overtime Provisions of the FLSA – Against Defendants)

39. Mr. Soylemez repeats and realleges each of the allegations set forth in the preceding paragraphs as if fully set forth herein.

40. At all relevant times, Defendants were employers engaged in interstate commerce and/or the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

41. At all relevant times, Defendants employed Plaintiffs within the meaning of the FLSA.

42. Defendants failed to pay Plaintiffs overtime compensation at a rate of one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a workweek, in violation of 29 U.S.C. § 207(a)(1).

43. Defendants' failure to pay Plaintiffs overtime compensation was willful within the meaning of 29 U.S.C. § 255(a).

44. Upon information and belief, as a result of Defendants' failure to record, report, credit and/or compensate Plaintiffs, Defendants have failed to make, keep and preserve records sufficient to determine Plaintiffs' wages, hours and other conditions and practices of employment in violation of 29 U.S.C. § 211(c).

45. The foregoing conduct constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

46. As a result of Defendants' unlawful conduct, Mr. Soylemez is entitled to an award of damages pursuant to 29 U.S.C. § 216(b) in an amount to be determined at trial including unpaid overtime compensation, liquidated damages, and costs and attorneys' fees.

SECOND CAUSE OF ACTION
(Violation of the Overtime Provisions of the New York Labor Law – Against Defendants)

47. Mr. Soylemez repeats and realleges each of the allegations set forth in the preceding paragraphs as if fully set forth herein.

48. At all relevant times, Defendants were Mr. Soylemez's employers within the meaning of the New York Labor Law, §§2 and 651.

49. Defendants failed to pay Mr. Soylemez overtime compensation at a rate of one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a workweek, in violation of New York Labor Law § 190 et seq. and supporting regulations of the New York State Department of Labor.

50. Defendants' failure to pay Mr. Soylemez overtime compensation was willful.

51. As a result of Defendants' unlawful conduct, Mr. Soylemez is entitled to an award of damages pursuant to § 663(1) of the New York Labor Law in an amount to be determined at trial including unpaid overtime compensation, liquidated damages, and costs and attorneys' fees.

THIRD CAUSE OF ACTION
(Violation of the New York Labor Law's Spread of Hours Provisions – Against Defendants)

52. Mr. Soylemez repeats and realleges each of the allegations set forth in the preceding paragraphs as if fully set forth herein.

53. Defendants failed to pay Mr. Soylemez one additional hour's pay at the basic minimum wage rate for each day Mr. Soylemez's spread of hours exceeded ten hours in violation of §§ 190 et seq. and 650 et seq. and the wage order of the New York State Department of Labor codified at N.Y. Comp. Codes R. and Regs. Title 12, §§ 137-1.7 and 137-3.11.

54. Defendants' failure to pay Mr. Soylemez an additional hour's pay for each day Mr. Soylemez's spread of hours exceeded ten hours was willful.

55. As a result of Defendants' unlawful conduct, Mr. Soylemez is entitled to an award of damages pursuant to § 663(1) of the New York Labor Law in an amount to be determined at trial including unpaid compensation, liquidated damages, and costs and attorneys' fees.

FOURTH CAUSE OF ACTION
(Violation of the Wage Theft Prevention Act, New York Labor Law § 195 – Against the Company)

56. Mr. Soylemez repeats and realleges each of the allegations set forth in the preceding paragraphs as if fully set forth herein.

57. The Company failed to provide Mr. Soylemez with a Notice and Acknowledgment of Pay Rate and Payday as required by the Wage Theft Prevention Act, New York Labor Law § 195.

58. The Company also failed to provide Mr. Soylemez with proper wage statements with every payment of wages in violation of the Wage Theft Prevention Act, New York Labor Law § 195.

59. The Company's violation of the Wage Theft Prevention Act, New York Labor Law § 195 as described herein was willful.

60. As a result of the Company's unlawful conduct, Mr. Soylemez is entitled to an award of damages pursuant to § 198 of the New York Labor Law in an amount to be determined at trial including unpaid compensation, liquidated damages, and costs and attorneys' fees.

FIFTH CAUSE OF ACTION
(Violation of Title I of the Americans with Disabilities Act – Against the Company)

61. Mr. Soylemez repeats and realleges each of the allegations set forth in the preceding paragraphs as if fully set forth herein.

62. The Company violated Title I of the ADA, 42 U.S.C. §12112, by discriminating against Mr. Soylemez based on a perceived or actual disability as defined by the ADA.

63. At all times relevant to this action, Mr. Soylemez had a physical impairment that substantially limited his major life activities. As a result of his appendicitis, Mr. Soylemez's ability to care for himself, perform manual tasks, walk, and work, among other things, was substantially limited as he underwent surgery and recovered from the procedure.

64. The Company was aware of Mr. Soylemez's condition. The Company's managers, Mustafa Turan and Mr. Isiktan, visited Mr. Soylemez while he was in the hospital and were in regular contact with him.

65. The Company violated Title I of the ADA by failing to accommodate Mr. Soylemez's disability. Rather, the Company terminated Mr. Soylemez's employment during the period in which he was physically disabled and hospitalized.

66. As a result of the Company's discrimination, Mr. Soylemez has suffered substantial damages, including but not limited to, lost past and future wages and benefits, emotional pain and suffering, and mental anguish, in an amount to be determined at trial.

67. The Company's discriminatory conduct was taken intentionally, willfully, maliciously, and/or with reckless disregard to Mr. Soylemez's rights, entitling Mr. Soylemez to punitive damages under the ADA.

SIXTH CAUSE OF ACTION
(Disability Discrimination under the New York State Human Rights Law – Against Defendants)

68. Mr. Soylemez repeats and realleges each of the allegations set forth in the preceding paragraphs as if fully set forth herein.

69. At all times relevant to this action, the New York State Human Rights Law was in full force and effect and applied to Defendants' conduct.

70. At all times relevant to this action, Defendants were an "employer" for purposes of § 292(5) of the New York State Human Rights Law and Mr. Soylemez was a "person" and an "employee" of Defendants for purposes of §§ 292(1) and 292(6) of the New York State Human Rights Law.

71. At all times relevant to this action, Mr. Soylemez had a significant medical impairment and was a qualified individual with a disability within the meaning of § 292(21) of the New York State Human Rights Law.

72. By its actions as set forth herein, including failing to accommodate Mr. Soylemez's disability and terminating his employment during the period in which he was physically disabled, Defendants unlawfully discriminated against Mr. Soylemez on the basis of his disability in violation of the New York State Human Rights Law.

73. As a result of Defendants' discrimination, Mr. Soylemez has suffered substantial damages, including but not limited to, lost past and future wages and benefits, emotional pain and suffering, and mental anguish, in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION
(Disability Discrimination under the New York City Human Rights Law – Against Defendants)

74. Mr. Soylemez repeats and realleges each of the allegations set forth in the preceding paragraphs as if fully set forth herein.

75. At all times relevant to this action, the New York City Human Rights Law was in full force and effect and applied to Defendants' conduct.

76. At all times relevant to this action, Defendants were an "employer" under § 8-102(5) of the New York City Human Rights Law and Mr. Soylemez was a "person" under § 8-102(1) of the New York City Human Rights Law.

77. At all times relevant to this action, Mr. Soylemez had a significant medical impairment and was a qualified individual with a disability within the meaning of § 8-102(16) of the New York City Human Rights Law.

78. By its actions as set forth herein, including failing to accommodate Mr. Soylemez's disability and terminating his employment during the period in which he was physically disabled, Defendants unlawfully discriminated against Mr. Soylemez on the basis of his disability in violation of § 8-107 of the New York City Human Rights Law.

79. As a result of Defendants' discrimination, Mr. Soylemez has suffered substantial damages, including but not limited to, lost past and future wages and benefits, emotional pain and suffering, and mental anguish, in an amount to be determined at trial.

80. Defendants' discriminatory conduct was taken intentionally, willfully, maliciously, and/or with reckless disregard to Mr. Soylemez's rights, entitling Mr. Soylemez to punitive damages under the New York City Human Rights Law.

PRAYER FOR RELIEF

WHEREFORE, Mr. Soylemez respectfully requests that this Court enter judgment against Defendants:

a. designating this action as a collection action and authorizing prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all putative class members, apprising them of the pendency of this action, and permitting them promptly to file consents to be Plaintiffs in the FLSA claims in this action;

b. declaring that the practices complained of herein are unlawful under the FLSA, the New York Labor Law, the ADA, the New York State Human Rights Law, and the New York City Human Rights Law;

c. awarding Mr. Soylemez (and the prospective collective class members) damages for the amount of unpaid overtime wages, and damages for any improper deductions or credits taken against wages under the FLSA as applicable;

d. awarding Mr. Soylemez (and the prospective collective class members) liquidated damages in an amount equal to 100% of their damages for unpaid overtime wages and any improper deductions or credits taken against wages under the FLSA as applicable pursuant to 29 U.S.C. § 216(b);

e. awarding Mr. Soylemez damages for the amount of unpaid overtime wages, any improper deductions or credits taken against wages, and unpaid spread of hours pay under the New York Labor Law as applicable;

f. awarding Mr. Soylemez liquidated damages in an amount equal to 100% of his damages for unpaid overtime wages, any improper deductions or credits taken against wages, and unpaid spread of hours pay under § 663 of the New York Labor Law as applicable;

g. awarding pre-judgment and post-judgment interest as applicable;

h. awarding Mr. Soylemez (and the prospective collective class members) the expenses incurred in this action, including costs and attorneys' fees; and

i. all such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Mr. Soylemez demands a trial by jury of all issues so triable.

Dated: New York, New York
November 30, 2016

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